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SOUTHERN DISTRICT OF CALIFORNIA

BY:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GEN-PROBE, INCORPORATED,)	Case No.: 99CV 2668H (AJB)
)	
Plaintiff,	)	NOTICE OF MOTION AND
	)	MOTION BY DEFENDANT VYSIS, INC.
	)	FOR A STAY OF PROCEEDINGS AND,
	)	ALTERNATIVELY, TO DISMISS COUNT
	)	FOUR OF THE FIRST AMENDED
v.	)	COMPLAINT UNDER FEDERAL RULE OF
	)	CIVIL PROCEDURE § 12(b) (6)
VYSIS, INC.,)	
)	
Defendant.	)	Date: April 10, 2000
	)	Time: 10:30, a.m.
	)	Place: Courtroom 1

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 10, 2000, at 10:30 a.m., or as soon thereafter as this matter may be heard before the Honorable Marilyn Huff in Courtroom 1 of the above-entitled Court, located at 940 Front Street, San Diego, defendant Vysis, Inc. ("Vysis") will, and hereby does, move the Court for an order staying the above-captioned action, with the exception that plaintiff be required to

timely respond to the first set of interrogatories served by Vysis on January 26, 2000, pending completion by the United States Patent and Trademark Office ("PTO") of the reissue proceeding for United States Patent No. 5,750,338 ("the '338 patent"), the patent in suit in this action. The application for reissue of the '338 patent was filed March 8, 2000, in the PTO.

Alternatively, defendant Vysis will, and hereby does, move the Court under Federal Rule of Civil Procedure 12(b)(6) for an order dismissing Count Four of the First Amended Complaint in this action, which purports to state a claim for violation of California Business and Professions Code sections 17200 et seq. The grounds for this alternative motion are that Count Four fails to allege facts which state a claim upon which relief can be granted.

The motion for stay will be based on this notice, the attached memorandum of points and authorities, and associated exhibits, the declaration of John H. L'Estrange, Jr., the pleadings, files and records in this case, and any oral and documentary evidence that may be presented at the hearing on this motion.

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1 The alternative Rule 12(b)(6) motion to dismiss Count Four will
2 be based on this notice, the accompanying memorandum of points and
3 authorities, the pleadings (including the license contract referred
4 to in the first amended complaint) files and records in this case,
5 and any oral argument that may be presented at the hearing on this
6 alternative motion.

7 Respectfully submitted,

8 FINNEGAN HENDERSON FARABOW DUNNER
9 & GARRETT, LLP

10 -and-

11 WRIGHT & L'ESTRANGE

12 Dated: March 9, 2000

13 By: John H. L'Estrange, Jr.
14 John H. L'Estrange, Jr.
15 One of the attorneys for
16 Defendant Vysis, Inc.
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